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US EPA RECORDS CENTER REGION 5



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November 12, 1998

**VIA TELECOPIER**

Counsel of Record

Albion-Sheridan Township Landfill

Re: United States v City of Albion, et al.

Dear Colleagues:

As you know, we have reached a settlement in principle of this case. We have not yet seen a copy of the Government's proposed Consent Decree, although I understand that a draft has been circulating internally within the Government for several weeks. A great deal of time has passed since we last met in Magistrate Judge Scoville's chambers. In order to make certain that the elements of our agreement are not forgotten, I am enclosing a proposed Memorandum of Understanding for your review and signature. My clients believe that, given the delay in circulating a draft of the Consent Decree, it is appropriate to memorialize the essence of our agreement, recognizing that it is all subject to ultimate approval in a Consent Decree. Please review the attachment and if you agree, please sign a copy and forward it to me. If you have any questions, please call me.

Sincerely,

  
Eugene E. Smary

/lap

cc: Magistrate Judge Joseph G. Scoville (w/enc.)  
Ms. Ceil Price (w/enc.)  
Mr. Rick Geiger (w/enc.)

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## MEMORANDUM OF UNDERSTANDING

*U.S. v. City of Albion et al., 1:97-CV-1037*

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This Memorandum of Understanding ("Memorandum") is entered into between the United States of America ("U.S."), the City of Albion (the "City"), Cooper Industries, Inc. ("Cooper"), Corning Incorporated ("Corning"), and Decker Manufacturing Company ("Decker"), who are each party to action number 1:97-CV-1037 filed in the United States District Court for the Western District of Michigan ("*U.S. v. Albion et al.*"). These parties shall be referred to throughout this Memorandum as the "Parties."

The action *U.S. v. Albion et al.* involves liability for contamination at the Albion-Sheridan Township Landfill. On September 15, 1998, the Parties participated in a settlement conference with Magistrate Judge Joseph G. Scoville. This Memorandum is intended to summarize the principal terms of settlement between the Parties arising from that settlement conference, in anticipation of the negotiation and execution of a consent decree between the Parties.

1. **Principal Terms of Settlement.** The principal terms of settlement agreed to by the Parties are as follows:

- (a) Cooper and Corning will construct the landfill cap.
- (b) The City and Decker will perform operation and maintenance, including long-term monitoring.
- (c) The City and Decker will pay for the U.S.'s future oversight costs, as a \$200,000 lump sum payment, to be paid within sixty days of the entry of the consent decree binding all parties. This \$200,000 represents a cap on the U.S.'s oversight of the remedy.
- (d) The City will pay the U.S. \$400,000 towards the U.S.'s past costs, which will be paid in five installments beginning one year after entry of the consent decree, plus interest.
- (e) Decker will pay the U.S. \$250,000 towards the U.S.'s past costs, which will be paid within thirty days of entry of the consent decree.
- (f) Cooper and Corning will pay for neither past costs nor future oversight costs.
- (g) The consent decree will include mutual releases, but will not preclude any party from pursuing any "non-de micromis" party.
- (h) The U.S. will extend contribution protection to the Parties.

- (i) Cooper and Corning will have rights at no charge to excavate and remove soil from the property adjacent to the landfill now owned by Decker's subsidiary, CDC, so long as CDC is a named insured on the construction contractor's CGL policy.
- (j) The consent decree will contain a reopener for the contingent remedy discussed in the Record of Decision, as well as for remedy failure. The parties agree to investigate insurance products that could minimize this risk.
- (k) The U.S. will grant a covenant not to sue to the Parties for liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as well as under the Resource Conservation and Recovery Act.

2. **Consent Decree.** The Parties agree to use their best efforts to negotiate in good faith a consent decree embodying the above principal terms of settlement.

\_\_\_\_\_  
The United States of America

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

and

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
The City of Albion

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Cooper Industries Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Corning Incorporated

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Decker Manufacturing, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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